

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

DONNA K. SOUTTER, *for herself and on behalf  
of other similarly situated individuals*

Plaintiffs,

Civil Action No. 3:10cv107

v.

EQUIFAX INFORMATION SERVICES, LLC

Defendant.

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF HER THIRD CONSENT MOTION  
TO AMEND SCHEDULING ORDERS TO PERMIT PLAINTIFF ADDITIONAL  
DISCOVERY AND TO ENLARGE TIME TO FILE HER REPLY BRIEF IN SUPPORT  
OF HER RENEWED MOTION FOR CLASS CERTIFICATION**

COMES NOW the Plaintiff, Donna K. Soutter (“Soutter” or “Plaintiff”), by counsel and with consent of the Defendant, and in support of her Third Motion To Amend Scheduling Orders To Permit Plaintiff Additional Discovery And To Enlarge Time To File Her Reply Brief In Support Of Her Renewed Motion For Class Certification, she states as follows:

In accordance with the Court’s June 18, 2010 scheduling order, “Phase I” discovery ended October 8, 2010. (Docket No. 42). After briefing as to Plaintiff’s original motion for class certification, appeal to the Court of Appeals for the Fourth Circuit and remand, the Court entered a new schedule for renewed class certification briefing, ultimately requiring Plaintiff’s reply brief in support of her Renewed Motion for Class Certification to be filed no later than May 3, 2013. (Docket No. 134). On April 29, 2013, the Court entered an order allowing the Plaintiff to conduct additional discovery and extending the time to file her reply brief in support of Plaintiff’s Amended Motion for Class Certification until June 28, 2013 (Docket No. 138). On June 28, 2013, the Court entered an order continuing those deadlines until July 29, 2013 (Docket

No. 142).

Pursuant to Fed. R. Civ. P. 16(b)(4), a scheduling order may be modified for good cause and with a judge's consent. Additionally, under Rule 6(b), the court may, for good cause, extend the time to respond to a motion upon request from a party prior to the expiration of the original deadline. Fed. R. Civ. P. 6(b)(1)(A).

On April 19, 2013, Equifax filed its response brief and in its opposition Defendant presented a new declaration from Mark Johnson on behalf of third party LexisNexis Risk Data Retrieval Services, LLC ("LexisNexis") (Docket No. 135-1). Equifax also filed related documentary evidence compiled and created after Plaintiff's filing of the renewed class certification motion and raised factual claims not previously the subject of Defendant's disclosed evidence or Plaintiff's discovery. This ultimately led to this Court's entry of an order on April 29, 2013 permitting the Plaintiff to conduct limited discovery regarding this new evidence and extending the deadline for the Plaintiff to file her reply brief in support of her Renewed Motion for Class Certification until June 28, 2013.

Plaintiff's counsel took the deposition of Mark Johnson on June 12, 2013 regarding his declaration and related documentary evidence. During his deposition, Mr. Johnson testified that he tasked preparation of the documentary evidence discussed in his declaration to Melissa Autin, the director of civil automation for LexisNexis, and identified her as the individual with most knowledge of the facts attested to in his Declaration. Plaintiffs acted on this information quickly and attempted to schedule Ms. Autin's deposition as quickly as they could. However, due to scheduling conflicts, including Ms. Autin's and Lexis-Nexis's counsel's unavailability for most of July, Plaintiff has not been able to take the deposition of Ms. Autin.

Following this deposition, on June 19, 2013, Plaintiff requested that Lexis-Nexis produce

the names of all of the independent contractors who have collected public records on its behalf in Virginia. Lexis Nexis ultimately identified seven such individuals, but Plaintiff did not receive any of the requested information until July 11, 2013 – almost a month later and too late to notice depositions of these individuals in time to include the information in her reply brief. Despite this, Plaintiff's counsel issued subpoenas ad testificandum and duces tecum to these seven individuals the very next day. The response dates listed in these subpoenas – July 23, 2013 for the document production and July 25 and 26, 2013 for the depositions – should have left Plaintiff with sufficient time to complete her reply brief over the weekend and before the current deadline of July 29, 2013.

However, shortly thereafter, Ronald Raether, counsel for Lexis-Nexis, sent Plaintiff's counsel an email identifying himself as counsel for five of the seven independent contractors that were served with subpoenas. Mr. Raether represented that two of the contractors would be out of town on a long planned vacation during the week that the depositions were scheduled. Furthermore, he represented that none of his clients would be able to produce documents or appear for depositions on the dates listed in the subpoenas. Mr. Raether and Plaintiff's counsel agreed that his client would produce documents on August 6, 2013 and that they would work to reschedule the depositions at a time in mid-August that would work for these third party contractors.

Plaintiff does not bring this motion lightly. However, in that Melissa Autin is apparently the individual responsible for providing much of the information included within Mark Johnson's declaration to counsel, and in that Plaintiff believes that Ms. Autin's testimony and the testimony of the various Lexis Nexis contractors is critically important to this Court's consideration of her motion and refutation of the Johnson declaration she alleges to be false,

Soutter now asks the Court for an additional 60 day extension to obtain this evidence from these eight individuals. The Defendant has consented to this extension of time for Plaintiff to file her reply brief conditioned upon the right to file a sur-reply as to such evidence. Furthermore, the Defendant will suffer no legal prejudice as a result of an extension and the interests of justice will be served by granting this motion.

For good cause shown, Plaintiff respectfully requests that this Court grant her Third Motion To Amend Scheduling Orders To Permit Plaintiff Additional Discovery And To Enlarge Time To File Her Reply Brief In Support Of Her Renewed Motion For Class Certification and enter the Proposed Order.

Respectfully submitted,  
**DONNA K. SOUTTER,**  
*individually and on behalf of all  
others similarly situated*

By: \_\_\_\_\_/s/\_\_\_\_\_  
Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of July, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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